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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/800,524	03/08/2001	Kunimasa Suzuki	204078US6	5017
22850 7590 11/18/2008 OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER SHAAWAT, MUSSA A				
ART UNIT 3627		PAPER NUMBER		
NOTIFICATION DATE 11/18/2008		DELIVERY MODE ELECTRONIC		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

09/800,524

Applicant(s)

SUZUKI ET AL.

Examiner

MUSSA A. SHAAWAT

Art Unit

3627

Period for Reply -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 02 September 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1,2,4-7,9-12,14-17 and 19-25 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,2,4-7,9-12,14-17 and 19-25 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____
- Paper No(s)/Mail Date _____

Response to Amendment

1. This action is in response to amendment filed on 09/02/2008. Claims 3, 8, 13 and 18 have been previously cancelled. Claim 25 have been newly added. Claims 1-2, 4-7, 9-12, 14-17, and 19-25 are pending examination.

Claim Rejections – 35 U.S.C. 103

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. The factual inquiries set forth in *Graham v. John Deere Co.*, 148 USPQ 459, that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or unobviousness.

4. Claims 1-2, 4-7, 9-12, 14-17, and 19-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharp et al. US Pat. No. (6,263,317), in view of Hafner et al. US Pat. No. (5,839,076).

Sharp disclose order information receiving means for receiving via a computer global network 150 at least first and second order information of merchandise (See for example Col. 1, line 56); the first order information being formed based on first purchase

requests received via respective first sales channels See Col. 1, lines 54-58, receiving purchase orders via internet using the network) that use the network; and a second order information being formed based on a second purchase requests received via a second sales channel which is a point-of-sale location that does not use the network (i.e., first and second customers; See Col. 1, lines 54-58, see **also fig. 1, which shows retailer 140 interpreted herein as the second sales channel**, See also for example Col. 3, lines 14-17); means for instructing a supplier of said merchandise to supply the merchandise based on the stock information (see col.3 lines 35-60); means for grasping an actual sales condition of said merchandise in the first and second sales channels based on the order information (see col. 3 line 61-col.4 line 55).

Sharp Does not expressly teach generating stock control information to control a stock of said merchandise to be distributed to the first and second sales channels based on the first and second order information and indicating through which of the first sales channel and the second sales channel a purchase request was received.

However Hafner, teaches generating stock control information to control a stock of said merchandise to be distributed to the first and second sales channels based on the first and second order information (see at least col.5 line15-col.6 line41)

Both Sharp et al., and Hafner et al., fail to teach indicating through which of the first sales channel and the second sale channel the purchase request was received.

Examiner takes **Official Notice** that indicating through which sales channel a purchase order was received is old and well know in the art (**as evident by Foster et al., US PG. Pub. No. (2003/0130905) see Para 0005, 0008-0010 and 0024**). It would

have been obvious to one of ordinary skill in the art at the time the invention was made to modify the disclosure of Sharp and Hafner to include indicating through which channel a purchase request was received so that a merchant would know which channel or means to sell his merchandise in order to increase profit and to gather marketing data.

Re: Claim 4 Sharp teaches receiving order information via the internet (see col. 1 lines 50-60)

Re: Claims 5-6, 9-11, 14-16, 19-20, and 25, the limitations of claims 5-6, 9-11, 14-16, 19-20 and 25, are similar to the limitations of claims 1, and 4, therefore they are rejected based on the same rationale.

Re claims 2, 7, 12, and 17, these claims are rejected under the old Official notice rejection dated 4/7/2006, the rejection was not traversed by applicant therefore according to MPEP 2144.03(c) it is considered admitted prior art. Sharp et al. in view of Hafner et al. lack the specific teaching of stopping the supply of merchandise due to the sales debut of a new product. However, it is well known in the art to stop the supply of a product when it is about to be replaced by a new product and it would have been obvious to one of ordinary skill in the art at the time of the invention to employ the step of stopping the supply of a product for a predetermined period before a new product is released, to prevent the accumulation of unwanted inventory.

Re claim 21-24: although Sharp does teach updating stock or inventory, Sharp does not expressly teach receiving an indication that the merchandise is returned or exchanged at the point of sale location. However Hafner teaches receiving an

indication that the merchandise is returned or exchanged at the point of sale location (see at least col.3 line 64-col.4 line 15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Hafner into the disclosure of Sharp in order to better manage the merchants inventory.

Claim Rejections – 35 U.S.C. 103

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. The factual inquiries set forth in *Graham v. John Deere Co.*, 148 USPQ 459, that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or unobviousness.

7. Claims 1-2, 4-7, 9-12, 14-17, and 19-25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sharp et al. US Pat. No. (6,263,317), in view of Hafner et al. US Pat. No. (5,839,076) in view of Official Notice.

Sharp disclose order information receiving means for receiving via a computer global network 150 at least first and second order information of merchandise (See for example Col. 1, line 56); the first order information being formed based on first

purchase requests received via first sales channel (See Col. 1, lines 54-58, receiving purchase orders via internet which is a first sales channel that uses the network) that use the network (See for example Col. 3, lines 14-17); means for instructing a supplier of said merchandise to supply the merchandise based on the stock information (see col.3 lines 35-60); means for grasping an actual sales condition of said merchandise in the first and second sales channels based on the order information (see col. 3 line 61-col.4 line 55).

Sharp teaches a retailer block 140 in figure 1; Sharp does not expressly teach a second order information being formed based on a second purchase request received via a second sales channel which is a point-of-sale location that does not use the network.

However in previous final action mailed out on 09/18/2006 (page 3), **Official Notice was taken that it was well known in the art of commerce to make a purchase request for a new product that is to be stored in a second sales channel which is a point of sales location (i.e., a retail location from which the owner of the retail establishment, acting as a customer, makes a purchase request from a supplier to restock his/her shelves) that does not utilize the network (i.e., the retail establishment uses mail, face-to-face, phone, or fax communication to make/send purchase request).** It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Sharp's disclosure to include a second sales channel not using the network in order to account for the overall inventory of a company that uses both the internet and brick & mortar to sell their products. In

addition going back to the final office action mailed out on 09/18/2006 on page 4 in the response to argument, since the applicant did not properly traverse the use of Official Notice in his arguments received 06/27/2006, the lack of traversal is treated as an admission by the applicant that the limitations described by the examiner as being well known are in fact well known.

Sharp Does not expressly teach generating stock control information to control a stock of said merchandise to be distributed to the first and second sales channels based on the first and second order information and indicating through which of the first sales channel and the second sales channel a purchase request was received.

However Hafner, teaches generating stock control information to control a stock of said merchandise to be distributed to the first and second sales channels based on the first and second order information (see at least col.5 line15-col.6 line41)

Both Sharp et al., and Hafner et al., fail to teach indicating through which of the first sales channel and the second sale channel the purchase request was received.

Examiner takes **Official Notice** that indicating through which sales channel a purchase order was received is old and well know in the art (**as evident by Foster et al., US PG. Pub. No. (2003/0130905) see Para 0005, 0008-0010 and 0024**). It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the disclosure of Sharp and Hafner to include indicating through which channel a purchase request was received so that a merchant would know which channel or means to sell his merchandise in order to increase profit and to gather marketing data.

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Re claims 2, 7, 12, and 17, these claims are rejected under the old Official notice rejection dated 4/7/2006, the rejection was not traversed by applicant therefore according to MPEP 2144.03(c) it is considered admitted prior art. Sharp et al. in view of Hafner et al. lack the specific teaching of stopping the supply of merchandise due to the sales debut of a new product. However, it is well known in the art to stop the supply of a product when it is about to be replaced by a new product and it would have been obvious to one of ordinary skill in the art at the time of the invention to employ the step of stopping the supply of a product for a predetermined period before a new product is released, to prevent the accumulation of unwanted inventory.

Re claim 21-24: although Sharp does teach updating stock or inventory, Sharp does not expressly teach receiving an indication that the merchandise is returned or exchanged at the point of sale location. However Hafner teaches receiving an indication that the merchandise is returned or exchanged at the point of sale location (see at least col.3 line 64-col.4 line 15). It would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the teachings of Hafner into the disclosure of Sharp in order to better manage the merchants inventory.

Response to Arguments

8. Applicant's arguments have been considered but are not persuasive. In particular applicant argues, A) Sharp neither describes nor otherwise suggests plural sales channels; B) applicant traverses the evidence that the examiner provided for the use of Official Notice on page 3 of the final office action mailed out on 7/22/08, specifically stating that Foster fails to suggest identifying through which of plural sales channel a purchase request was received; in addition applicant states that Foster is not prior art and cannot be used as evidence because the filing date of Foster is 11/15/2002 which is after the filing date of the present application 03/08/2001.

In response to A) examiner respectfully disagrees. Applicant is reminded that claims must be given their broadest reasonable interpretation. Not only does Sharp teaches a first sales channel via a website on the internet as indicated by applicant on page 13 in the remarks, Sharp also teaches second sales channel which is in this case the retailer shown on Fig. 1 block 140, customer is able to walk into the retailer and communicate face to face with the cashier or POS and make a purchase i.e. receiving a purchase order via a second sales channel (retailer block 140 of fig. 1) without using the network. In addition going back to the final office action mailed out on 09/18/2006 on page 4 in the response to argument, since the applicant did not properly traverse the use of Official Notice in his arguments received 06/27/2006, the lack of traversal is treated as an admission by the applicant that the limitations described by the examiner as being well known are in fact well known. Therefore Sharp still meets the scope of the limitation as currently claimed.

In response to B) examiner respectfully disagrees. Applicant is reminded that claims must be given their broadest reasonable interpretation. Foster discloses a user is able to recognize a brand distribution channel, for example the distribution channels may be retail, wholesale, internet and mail order (Para 0005, 0008-0010 and 0024). I.e. when a purchase order is received a user using the channel editor taught by Foster is able to know if the product is being received from retail i.e. second sales channel or Internet i.e. first sales channel. Therefore Foster still meets the scope of the limitation *said order condition data, which includes the sale method, indicates through which of the first sales channel and the second sales channel a purchase request was received* as currently claimed. In addition the limitation *said order condition data, which includes the sale method, indicates through which of the first sales channel and the second sales channel a purchase request was received*" carries little patentable weight, because it pertains to non-functional descriptive material, **see *In re Ngai case # 70 USPQ2d 1862***.

In response to Foster cannot be used as prior art due to the filing date being after the filing date of the present application, the examiner is not relying on the filing date of Foster, the examiner is relying on the continuation date which goes back to March 22, 1998, which is before the filing date of the present application; therefore the use of Foster was Proper.

Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to MUSSA A. SHAAWAT whose telephone number is (571)272-2945. The examiner can normally be reached on Mon-Fri (8am-5:30pm).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Florian Zeender can be reached on 571-272-6790. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Mussa A Shaawat/
Examiner, Art Unit 3627
October 29, 2008

/F. Ryan Zeender/
Supervisory Patent Examiner, Art Unit 3627